

**Camden Select Board
Minutes of Meeting
August 2, 2010**

PRESENT: Chairperson Karen Grove, Vice Chairperson Deborah Dodge, John French, Jr., Morgan Laidlaw, Martin Cates, Town Manager Roberta Smith, and Town Attorney William Kelly. Also present were members of the press and public.

Contents

1. Public input on non-agenda items.

- a. There was no public input.

It was the consensus of the Board to change the order of the agenda. They agreed to put items 3-5 before item 2.

3. Approval of application from Farmer's Fare for an off-premise liquor license to serve alcoholic beverages for the Sweet Chariot Music Event at the Camden Snow Bowl on Friday, August 6, 2010 and Saturday, August 7, 2010 from 6:00 pm to 10:00 pm both evenings. No discussion

John French made a motion to approve the application of Farmer's Fare for an off-premise liquor license to serve alcoholic beverages for the Sweet Chariot Music Event at the Camden Snow Bowl on Friday, August 6, 2010 and Saturday, August 7, 2010 from 6:00 pm to 10:00 pm both evenings. Deborah Dodge seconded this motion. The motion passed on a 5-0-0 vote.

4. Approval of application of Wayfarer Marine for an Assembly Permit for Saturday, August 7, 2010 from 5:00 pm to 10:00 pm for a private regatta party at Wayfarer Marine at 59 Sea Street. No discussion

Martin Cates made a motion to approve the application of Wayfarer Marine for an Assembly Permit for Saturday, August 7, 2010 from 5:00 pm to 10:00 pm for a private regatta party at Wayfarer Marine at 59 Sea Street. John French seconded this motion. The motion passed on a 5-0-0 vote.

5. Approval of the Certificate of Commitment for wastewater charges for the period of April 10, 2010 to July 10, 2010. No discussion

John French made a motion to approve the Certificate of Commitment for wastewater charges for the period of April 10, 2010 to July 10, 2010. Martin Cates seconded this motion. The motion passed on a 5-0-0 vote.

Chairperson Grove read the rules and regulations for conducting public hearings in preparation of the public hearings to be held this evening.

2. Public Hearings on the following renewal liquor license and special amusement permit application:

- a. Application of Quarterdeck, Inc. d/b/a Cuzzy's at 21 Bay View Street for a Class XI Spirituous, Vinous and Malt Liquor License.

Chairperson Grove asked to hear from any proponents.

Tory Sutton – Sand Street – only night of week that she gets out and she has met a lot of people in the community. It would be too bad if something should happen that we couldn't have this gathering place.

Rich Mason – doorman – He is doing his job as the door man and making sure everyone is carded and legal age to be drinking alcohol at Cuzzy's.

Chris Gray – Rockland resident- manages audio/visual department at Samoset Resort and he also works at Cuzzy's providing a karaoke show. He wanted to say that Chris Cousins is one of the people that he has noted over the past year that has tried more than anyone else he knows to keep the volume down. Chris addresses him when the music is too loud and asks him to turn it down. Chris does not want to disturb his neighbors and wants to play by the rules.

John Orlando – Camden resident – owns a concert promotion company and he puts on events throughout the midcoast area and one event is at Cuzzy's on Tuesday evenings. It's an open mike forum which brings musicians from all around the surrounding towns to give them an opportunity to perform their art. He thinks it's very important to have a vibrant night life but more importantly art venues especially during the tourist season.

Linda Lewis – works at Cuzzy's as bartender – she witnessed a couple with a Down syndrome daughter on open mike night. They told her they were on vacation and they had been looking around for some place to take their daughter so she can enjoy herself and they were very thankful about the type of music being played at Cuzzy's because their daughter thoroughly enjoys listening to music.

Jesse Haegler – Park Street – enjoys Cuzzy's because it's very relaxed, the bartenders are very responsible, courteous, and polite and everybody seems to have a good time and he would like to continue to have a place like that to go and relax.

Kenny Roback – he has extensive knowledge of how restaurant and bar businesses work. He services over a 1,000 of them. If you take away his entertainment license the business will not survive.

Chairperson Grove asked to hear from any opponents.

Willard Wight – Bay View Street – he wants the Select Board to make sure the town ordinance is followed by shutting down the music and noise after 11 pm. About two years ago there was a change in the venue and as a result the loud music noise has increased and continues beyond 11 pm. It is rather disconcerting to hear the music coming in through the top of the roof after 11 pm. He is not against the music and restaurant but please don't keep it after 11 pm.

John Duffy – Chestnut Street – he lives next door to Cuzzy's. He thinks Chris is a good decent person. The problem there is amplification. He luckily has two bedrooms so when the sound is too high he can go to the bedroom on the front and not be bothered by the noise. He earns his living writing music for film and theater. He feels that the Select Board can help by putting up signs to get

people to quiet down so that we can all live harmoniously and Chris could have his business and we can all sleep.

Police Lieutenant Randy Gagne reported that the Camden Police Department is spending a considerable amount of time at Cuzzi's compared to other same type establishments in town. The complaints are noise related and alcohol related. Cuzzi's does have an entertainment license that allows them to have amplified music until 12:30 am. He read through list of 36 incidents reported to the Camden Police Department from 6/6/09 to 8/1/10.

Cuzzi's owner, Chris Cousins, stated as far as incidents relating to alcohol he would like it noted that two of them were for violation of bail conditions. They have no way of knowing if someone who enters the bar has bail conditions. If they are over 21 and have proof then they are served.

Attorney Chris MacLean, representing, Chris Cousins, stated OUI stops give notoriously unreliable information because perhaps it's a natural instinct to want to misrepresent where they have been, who've they been with, and how much they have had to drink. People tend not to open up and tell their life histories to the police officers under stressful situations where they are concerned about criminal liability. He feels the Board should look at these collectively. The Board should look at how many incidents because the individual facts are not reliable enough. It is a drinking establishment and you are likely to see 1 or 2 OUI's surface over the course of year and there is an effort being made to minimize those.

He further stated the Board is permitted to look at ordinance violations beyond alcohol connected violations when they consider the liquor license but if you are going to rely on others kinds of violations they have to be unreasonable disturbances of the peace. He urges the Board not to look at just noise complaints as connected to alcohol. When you look at the liquor license portion of this he urges the Board not to place too much on the overall volume of police interaction because there really aren't that many alcohol related incidents and some of them Cuzzi's should not be held accountable for. The bail violations ones and even some of the OUI's would be hard to pin on Cuzzi's if you don't know if there was some intervene drinking going on that led to it.

Chairperson Grove closed the public portion of the hearing.

Town Attorney Bill Kelly clarified the standard for issuance of a liquor license. The municipalities are the ones who have the hearings to address the facts involved with anyone who makes application for a liquor license. The license is actually issued by the state but the elected officials either approve or deny the application by permit and that is what the establishment owner is going to use to get the license from the state. At this level of the hearing the elected officials are governed by statute Title 28-A section 653 & 654 which identifies the standards that the board has to review.

Mr. Kelly also told the Board that the summary prepared by Chief Phil Roberts reflects all service calls by the police and it was not a particular witness test so what Chief Roberts provided is a complete list and the Board has heard the argument that some of them do not apply to Cuzzi's but he wanted the Board to know how the list was created.

Chairperson Grove closed the public portion of the hearing, and Board discussion ensued.

Chairperson Grove stated she is reluctant to withhold the liquor license because she knows that a restaurant can live and die by having that liquor license. She wants to see any business in town survive and thrive. With that being said as we go forward this evening she wants the Board to explore every avenue that they can to ensure that Cuzzy's can stay in business and continue to thrive and go forward.

Board member French agrees no one wants to shut them down without out good cause but they have a responsibility as every business does to act responsibly. Police are down there are way too much. As a responsible business owner he should not be allowing these incidents to go on after 1:15 am.

Board member Cates does not want to see Cuzzy's shut down either but there does need to be some bar set and a agreement walking away that we revisit this sooner than a year.

Board member Laidlaw stated with the closure of another bar that had many years of history downtown there is a real need for people to have fun and enjoy themselves and at the same time it's a balancing act and it's up to the bar owner to maintain that balance. However, obviously there has been a tipping point that has been tipped too much and that's why we are in this dilemma.

Vice Chairperson Dodge stated she would have thought after the Board meeting last October with Chris Cousins that we would not have seen any more activity that required a police presence but most of the liquor problems happened after that meeting in October. There are a significant number of noise issues also reported after October so she does not understand where the responsible management is at the facility and that really concerns her. She does not think the Police should have to come down and remind people to close windows because the noise is too loud. We have the responsibility to make sure that the ordinance is upheld and that we do have standards and apply them fairly and equitably.

At 8:45 pm the hearing was closed to public record as suggested by Town Attorney Kelly so that the attorneys could have a private discussion about the list of stipulated conditions set by the Board so that there is no dispute over conditions that they may allege that are beyond the Board's authority.

The hearing opened back up at 9:00 pm.

John French made a motion to approve the renewal liquor license with the following stipulated conditions:

- 1) Applicant shall abide by all federal and state laws, rules and regulations relating to liquor including but not limited to the requirement of no service of alcohol after 1:00 am and tables shall be cleared of all alcoholic drinks no later than 1:15 am or revocation proceedings may be triggered;**
- 2) All employees at all times shall be provided TIPS training;**
- 3) Applicant shall participate in review of license in approximately two months including calls for service from Camden Police Department and status of the TIPS training for servers.**

Martin Cates seconded this motion. The motion passed on a 5-0-0 vote.

For the future if the police make any service calls after 1:15 am and open alcoholic beverages are found a summons will be issued. At that point the Select Board will schedule this on the next

available Select Board agenda and the Board will vote to authorize prosecution for revocation of the liquor license which will be handled in District Court.

- b. Application of Christopher Cousins, d/b/a Cuzzy's at 21 Bay View Street for a Special Amusement Permit.

Chairperson Grove asked to hear from any proponents.

Linda Lewis – employee of Cuzzy's – when people come into the restaurant and hear the music playing and they will go upstairs to the bar and Chris will make money from that and we all want to make sure Chris can make some money and make sure all businesses in the area can make some money.

Rich Mason – door man at Cuzzy's – He works mostly Thursday, Friday, and Saturday evenings and has never seen anything at Cuzzy's that would be objectionably loud inside. There are a lot of tourists that come from all over the country and they are looking for live entertainment. Chris has put up soundproofing and employees have been instructed to let him know when sound is too loud.

Don Weaver – in his opinion noise level can't be set by ear sound. You need to set a decibel reading outside of the business that you consider unreasonable. You could say after a certain time of the night the sound cannot be no more than whatever you choose for a decibel number. A good decibel meter is not cost prohibitive. A decibel meter can be purchased for under \$100.

Chris Cousins, owner of Cuzzy's, stated last October at the Camden Select Board meeting the Board discussed with him at that time how to reduce the noise at Cuzzy's. He has been working with the bands by monitoring the noise and letting them know that it is a small place and he does have close neighbors. He has been shutting bands and karaoke off at 12:30 am and gives last call at this time.

Through the winter and early spring they were not having as much of a problem with the noise until about June when customers started opening windows. He has instructed employees when windows are open to stop what they are doing and close the windows but even with their best efforts windows get opened so he has installed locked on windows so that wouldn't be an issue. Fire Chief Farley told him because of the proximity to his sprinkler system in the building he is okay with the padlocks. He asked him to install a couple more exit signs and an emergency fire exit sign that goes up through the office and back door.

Ken Robach – it would be great if there could be some middle ground understanding on both sides. He likes the music and culture here and he does not want to see it go. It was said that Cuzzy's has irresponsible management and he has seen him make a lot of changes. He does care and does want to get along with his neighbors. Mr. Robach is against the Board taking away his entertainment license.

Attorney Chris MacLean – stated from Chris Cousin's point of view it does not matter that it is only 1 or 2 people making the complaints. He understands they are citizens and residents and they deserve to have the ordinance respected. He does think it's bare noting in Chris's defense that if this were a revocation or suspension hearing the Board would have to find not only that there was a violation of the ordinance but that the establishment took no reasonable action to abate the conduct and with each issue being raised the establishment did in fact take reasonable steps to abate it. It

may not have succeeded but the reasonable steps were taken. He suggested that the Board take note that reasonable steps have been taken and that should not be a basis for not granting a permit. We should be talking about additional steps that should be taken to further abate the problem.

Tim Whittier- at times when he has been at Cuzzys he has witnessed Chris banning customers from returning because they have been some of the major causes of extra noise. He genuinely believes he will continue to do this and keep trying to abate the noise issue.

Kim Rand – stated she understands the town has not purchased decibel meter because they have not had a use for one before but perhaps this would be a good solution to the problem. If the meter is not cost prohibitive and the sound level is offensive to residents that live in the area and the town is trying to find some common ground that allows a businessman to keep his business that has live entertainment then why would this not be a good option. This option would also certainly free up the time of the town council and the police department and in the end would be a cost savings to the town.

Chairperson Grove asked to hear from any opponents.

John Duffy – Chestnut Street – stated he very much wants to see Chris's business prosper but he thinks some restriction needs to be put on the amp or cut the amps altogether. He is extremely offended that he is being singled out by people saying that this has all come about because of two people complaining.

He would like to remind people that three years ago there was a meeting at McKittrick & Warren's law office where 6 people including Chris were present complaining about the noise. As he stated before he earns his music composing for theater film recording with the best engineers and this kind of nuisance can be controlled by controlling the amp and the use of amplified sound.

Willard Wight – Bay View Street – the reason he is here is because we have a noise ordinance that prohibits noise from 11 pm to 7 am. This has been going on for a long time and we have been having dialogue for several years and he is getting tired of calling the police department on a regular basis. He is the principle person that is making the complaints because when it interferes with the peace and quiet of his apartment which is over 50 feet from the source of the noise. As a result you either have an ordinance that you can enforce or you need to get rid of it. He is here looking for relief under the ordinance.

Chairperson Grove closed the public portion of the hearing, and Board discussion ensued.

Board member Laidlaw stated live entertainment is important and he understands people are coming to town, spending money and helping the town survive so we need to have music but it's a nuisance to neighbors at certain times and we need to adjust things.

Board member Dodge stated she feels it is important to put in black and white a decibel number of what is acceptable at 50 feet. She knows other communities do it and this would take the guess work out of it and it also helps the business owner before the complaint happens. That is what is distressing is the complaint has to happen and then something is done about it. She thinks setting an ordinance with a decibel level would help make it black and white.

Board member Grove stated this problem has been going on for some time now. Chris says he is working on it but she counted 19 noise violations and there has to be way to fix this and that responsibility rests in the hands of the establishment owner.

Board member French stated he agrees with everything being said and the Board should consider no amplified music after 11 pm.

Board member Cates would like to know what Chris Cousins proposes to fix the problem.

Chris Cousins stated most of the noise complaints seem to be coming from the bands and proposes that the music bands go away. He commented the meeting that keeps getting referred to that happened three years ago was when Peter Ott's and Gilberts were doing the bulk of the business. His establishment Quarterdeck had not been open that long. He went because he was mentioned a little bit but they had not done much with entertainment at that time.

After further discussion,

Morgan Laidlaw made a motion that the Special Amusement Permit be approved with the following stipulated condition: No live music played with the exception of acoustic instruments accompanied by a small PA system. Martin Cates seconded this motion. The motion passed on a 5-0-0 vote.

6. Committee Reports: There were no reports.

7. Manager's Report: There was no report

At 10:45 pm Deborah Dodge made motion to adjourn the meeting. Martin Cates seconded this motion. The motion passed on a 5-0-0 vote.

Respectfully submitted,

Janice L. Esancy
Recording Secretary